

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL AXTMAN,

Plaintiff,

v.

KNOWLEDGE LEARNING  
CORPORATION., a Delaware company,  
and KC DISTANCE LEARNING, INC. a  
Delaware company, and KINDERCARE  
LEARNING CENTERS, INC. a Delaware  
company, and K12, INC. a Delaware  
company,

Defendants.

NO.

**COMPLAINT FOR BREACH OF  
CONTRACT AND WILLFUL  
WITHHOLDING OF WAGES**

COMES NOW Plaintiff Michael Axtman ("Plaintiff"), by and through his counsel of record, LASHER HOLZAPFEL SPERRY & EBBERSON, P.L.L.C., and asserts the following causes of action against the named Defendants:

**I. PRELIMINARY STATEMENT**

1.1 This is an action under Washington's Minimum Wage Act, RCW 49.52 *et seq.*; and Washington common law for breach of contract, monetary damages, costs, and attorneys

1 fees.

## 2 **II. JURISDICTION AND VENUE**

3 2.1 Jurisdiction over this case is properly with the United States District Court for the  
4 Western District of Washington at Seattle pursuant to 28 U.S.C.A. § 1332.

5 2.2 Jurisdiction and venue are properly with United States District Court for the  
6 Western District of Washington at Seattle pursuant to 28 U.S.C.A. § 1391, the fact that  
7 Defendants submitted to the jurisdiction of the Courts of Washington. Defendants KCDL, KLC,  
8 KINDERCARE LEARNING CENTERS, INC., and K12, Inc. all transact business in  
9 Washington State.

## 10 **III. PARTIES**

11 3.1 Plaintiff. Plaintiff Michael Axtman was employed by KC Distance Learning, Inc.  
12 (KCDL) and his employment was terminated by KLC and KC Distance Learning, Inc. (KCDL)  
13 on or about November 28, 2010. Plaintiff is a citizen of the United States and resides in King  
14 County, Washington.

15 3.2 KNOWLEDGE LEARNING CORPORATION. Defendant KNOWLEDGE  
16 LEARNING CORPORATION (hereinafter referred to as "KLC"), upon information and belief,  
17 is a Delaware corporation. At all times hereto, KLC was and is responsible for all acts  
18 committed by its agents, representatives, and employees.

19 3.3 KC DISTANCE LEARNING, INC. Defendant KC DISTANCE LEARNING,  
20 INC. (hereinafter referred to as "KCDL"), upon information and belief, is a Delaware  
21 corporation. At all times hereto, KCDL, was and is responsible for all acts committed by its  
22 agents, representatives, and employees. At the time of plaintiff's initial employment with  
23 KCDL, it was a wholly owned subsidiary of KLC.

24 3.4 KINDER CARE LEARNING CENTERS, INC. Defendant KINDERCARE  
25 LEARNING CENTERS, INC., upon information and belief, is a Delaware corporation. At all  
times hereto, KINDERCARE LEARNING CENTERS, INC., was and is responsible for all acts

1 committed by its agents, representatives, and employees.

2 3.5 K12, Inc. Defendant K12, Inc. is upon information and belief, a Delaware  
3 corporation. At all times hereto, K12, Inc. was and is responsible for all acts committed by its  
4 agents, representatives, and employees.

#### 5 IV. FACTS

6 4.1 Plaintiff herein incorporates by reference the foregoing paragraphs of Plaintiff's  
7 Complaint as if set forth herein at length.

8 4.2 Michael Axtman entered into an Employment Agreement on January 11, 2007  
9 with KCDL. Michael Axtman began working for KCDL and paychecks were issued to him from  
10 an affiliate business, KLC. Paragraph 6.2 of the Employment Agreement provides for  
11 application of Washington law.

12 4.3 As confirmed by the Employment Separation Agreement and Release of Claims  
13 effective November 28, 2009, his employment was terminated by KLC and KC Distance  
14 Learning, Inc. (KCDL). Both entities are listed as Michael Axtman's employer, which was  
15 consistent with his payroll checks from KLC. Paragraph 17 of the Employment Separation  
16 Agreement and Release of Claims provides for application of Washington law. The scope of the  
17 Employment Separation Agreement and Release of Claims specifically released "claims . . .  
18 related in any way to employment or future failure or refusal to employee Employee" but did not  
19 include any claims under the Nonqualified Deferred Compensation Plan. Paragraph 5 of the  
20 Employment Separation Agreement and Release of Claims states in relevant part, "This  
21 Agreement shall not affect any rights which Employee may have under any employee benefit  
22 plans or programs, including, without limitation, . . . Nonqualified Deferred Compensation Plan  
23 maintained by KCL." Further, paragraph 15 of the Employment Separation Agreement and  
24 Release of Claims provides that the Asset Purchase Agreement dated January 10, 2007 among  
25 KC Distance Learning, Inc., Plaintiff and certain other parties, also shall survive, shall not be

1 affected by, and shall remain in full force and effect following the termination of Employee's  
2 employment.

3 4.4 Michael Axtman was entitled to deferred compensation under the KLC and  
4 KinderCare Learning Centers, Inc. Nonqualified Deferred Compensation Plan. He was provided  
5 with documents which purport to be the "Summary Description of Knowledge Learning  
6 Corporation KinderCare Learning Centers, Inc. Nonqualified Deferred Compensation Plan  
7 (hereinafter referred to as the "Plan.")

8 4.5 The Plan was a contract between KLC, KinderCare Learning Centers, Inc. and  
9 Michael Axtman.

10 4.6 KinderCare Learning Centers, Inc. is a wholly owned subsidiary of KLC.

11 4.7 Michael Axtman is owed his unpaid compensation due to him in the form of  
12 deferred compensation that was promised him in the Plan. All other employees of KCDL  
13 received lump sum deferred compensation payments when KCDL was sold in or around July of  
14 2010.

15 4.8 K12, Inc. is a successor to KCDL's liabilities, including the deferred  
16 compensation liability of KLC. Upon information and belief, K12, Inc. acquired all stock in  
17 KCDL in or around July of 2010.

18 4.9 KCDL was sold to K12, Inc. in July of 2010. Upon information and belief, all  
19 KCDL employees were transferred to KCDL's books immediately prior to the sale, and they all  
20 received a lump sum payment for their deferred compensation due to the change of control  
21 language in the Plan.

22 4.10 The allegations in 4.9 above were confirmed in emails between Michael Axtman  
23 and Amanda Vincente in September of 2010. Amanda Vincente also informed Michael Axtman  
24 that in fact, KCDL did not have any employees and that he was not an employee of KCDL. This  
25 seemed to be form without substance, given the fact that Michael Axtman had an Employment  
Agreement with KCDL and his Separation Agreement included both KCDL and KLC. Further,

1 the Plan which provides for deferred compensation does not distinguish between current and  
2 former employees and should be equally applied.

3 4.11 Defendants have refused to compensate Plaintiff for his deferred compensation, to  
4 be paid in a lump sum. Instead, Defendants had been paying Plaintiff over time, rather than the  
5 immediate lump sum payments that were provided to all other KLC employees who were  
6 transferred to KCDL prior to the sale. In short, Defendants have willfully withheld and  
7 intentionally deprived Plaintiff of said wages.

8 4.12 The unlawful employment practices complained of in the above paragraphs were  
9 intentional and willful.

10 4.13 As a result of Defendants' breach of contract and failure to pay him the deferred  
11 compensation owed to him, Plaintiff has suffered and continues to suffered financial damages.

12 V. FIRST CAUSE OF ACTION: BREACH OF CONTRACT

13 5.1 Plaintiff herein incorporates by reference the foregoing paragraphs of Plaintiff's  
14 Complaint as if set forth herein at length.

15 5.2 Defendants breached their contract with Plaintiff by failing to pay Plaintiff his  
16 deferred compensation owed under the Plan.

17 5.3 Michael Axtman was provided with rights under the KLC plan to deferred  
18 compensation. He was purportedly terminated by KLC and KCDL, as evidenced by the  
19 Employment Separation Agreement. All other KCDL employees were transferred into KCDL  
20 from KLC immediately prior to the sale. Given that his Separation Agreement states that he was  
21 employed by KLC and KCDL, he should have been considered a KCDL employee and afforded  
22 the same rights as the other employees. He could have either been transferred to KCDL, as all  
23 other KLC employees were transferred to KCDL, or the business could have followed the  
24 Employment Separation Agreement, which already named his employers as KLC and KCDL.  
25 The Separation Agreement specifically included both entities and required that he release legal  
claims against both entities. Paragraph 4 of the Separation Agreement specifically included both

1 entities and required that he release such claims against both entities. The last page of  
 2 Separation Agreement does not even name the entity or entities that are parties to the contract,  
 3 and simply has a signature for Donna Lesch of Human Resources. Thus, the first paragraph of  
 4 the Separation Agreement, which includes both entities as his employer must control.

5 5.4 The change in control language in the Plan does not distinguish between current  
 6 and former employees. Section 16 of the Plan states:

7 16. Change in Control

8 The Plan provides that in the event of a change in control, all unpaid deferred  
 9 compensation . . . will be paid within 60 days after the change in control. Change  
 10 of control generally means:

11 . . .

12 b) With respect to participants who are current or former employees of any  
 13 affiliate of the Company to which (a) does not apply.

14 5.5 As a direct and proximate result of Defendants' breach of contract and breach of  
 15 promises made in the Plan, Plaintiff has been harmed in an amount to be proven at trial.

16 **VI. SECOND CAUSE OF ACTION: FAILURE TO PAY WAGES**

17 6.1 Plaintiff herein incorporates by reference the foregoing paragraphs of Plaintiff's  
 18 complaint as if set forth herein at length.

19 6.2 Michael Axtman is owed deferred compensation, in the form of unpaid deferred  
 20 salary and bonus. The amount in controversy exceeds the sum or value of \$75,000.

21 6.3 The Plan specifically states that it allows for deferral of compensation. Paragraph  
 22 4 of the Plan speaks to deferral of a portion of salary and bonus. RCW 49.48.010 requires  
 23 payment of all wages due upon termination. Further, RCW 49.52.050(2) requires payment of  
 24 wages unlawfully withheld. While the compensation owed to Michael Axtman became due  
 25 when the change in control took place and K12, Inc. purchased the assets of KCDL. All KCDL  
 employees were transferred into KCDL for purposes of the change in control language. This



1 triggered the obligation to pay Michael Axtman in full.

2 6.4 Defendants willfully and intentionally deprived Plaintiff of said wages.

3 6.5 As a direct and proximate result of Defendants' action, Plaintiff has sustained  
4 damages is an amount to be proven at trial.

5 **XIV. PRAYER FOR RELIEF**

6 Wherefore, Plaintiff Michael Axtman respectfully requests that this Court:

7 (1) Award him damages for the breach of contract. The amount in controversy  
8 exceeds the sum or value of \$75,000.

9 (3) Order Defendants to make Plaintiff whole by providing appropriate deferred  
10 compensation with prejudgment interest at 12% per annum pursuant to RCW 19.52.010, in  
11 amounts to be determined at trial;

12 (4) Order Defendants to pay wages owing including double damages, interest and  
13 attorneys fees pursuant to RCW 49.52.010 *et seq.* and RCW 49.48 .010 *et seq.*;

14 (5) Award Plaintiff all of the recoverable costs of this action, attorneys' fees and  
15 prejudgment interest; and

16 (6) Grant any additional or further relief as provided by law which this Court finds  
17 appropriate, equitable, or just.

18  
19 DATED this/ 3 day of January, 2011.

20  
21 LASHER HOLZAPFEL  
22 SPERRY & EBBERSON, P.L.L.C.

23  
24 By 

25 Lisa Ann Sharpe, WSBA #21047  
Attorneys for Plaintiff Michael Axtman